

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Applicant,

v.

DAVID GROEN

Respondent.

Civil Action No.

**SECURITIES AND EXCHANGE COMMISSION’S
APPLICATION FOR AN ORDER TO SHOW CAUSE AND
FOR AN ORDER REQUIRING OBEDIENCE TO SUBPOENA**

The Securities and Exchange Commission (“Commission”), by its undersigned counsel, respectfully submits this Application for an Order to Show Cause and for an Order Requiring Obedience to Subpoena (“Application”), and together with the accompanying Memorandum in Support of Application and Declaration of Kyle Bradley (“Bradley Decl.”) and the Exhibits thereto, shows the following:

1. Respondent David Groen (“Groen”) has refused to comply with a Commission investigative subpoena requiring him to produce documents and to

appear for testimony in the Commission's non-public investigation In the Matter of West Mountain LLC. (Internal File No. A-03767) (the "West Mountain Investigation").

2. In connection with the West Mountain Investigation, on July 23, 2017, the Commission issued an Order Directing Private Investigation and Designating Officers to Take Testimony (the "Formal Order"). Among other things, the Formal Order:

- (i) directed, pursuant to Section 20(a) of the Securities Act of 1933 ("Securities Act") 15 U.S.C. § 77t(a), Section 21(a) of the Securities Exchange Act of 1934 ("Exchange Act") 15 U.S.C. § 78u(a), and Section 209(a) of the Investment Advisers Act of 1940 ("Advisers Act") 15 U.S.C. § 80b-9(a) that the Commission staff conduct a private investigation to determine whether any persons or entities had engaged in acts or practices in violation of various provisions of the securities laws; and
- (ii) designated, pursuant to Section 19(c) of the Securities Act 15 U.S.C. § 77s(c), Section 21(b) 15 U.S.C. § 78u(b) of the Exchange Act, and Section 209(b) of the Advisers Act 15 U.S.C. § 80b-9(b) certain individuals as officers of the Commission empowered to administer

oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the investigation. Bradley Decl. ¶4.

3. The Commission is investigating, among other things, whether any persons or entities have engaged in acts constituting violations of various provisions of the federal securities laws by, among other things, misrepresenting the value and performance of hedge funds purportedly managed by West Mountain LLC (“West Mountain”), an Atlanta-based investment adviser. (Bradley Decl. ¶ 3.)

4. Acting on behalf of the Commission pursuant to the Formal Order, on October 4, 2017, Commission staff served a subpoena on Respondent Groen calling for the production of documents and testimony (“the subpoena”). The subpoena called for the production of documents by October 27, 2017 and, thereafter, for Groen to present himself for testimony in the Atlanta Regional Office of the Securities and Exchange Commission on November 30, 2017. Bradley Decl. ¶¶6 and 8.

5. Groen has not complied with any portion of the subpoena. (Bradley Decl. ¶¶ 7 and 22).

6. Accordingly, the Commission hereby submits this Application for an Order to Show Cause, in the form attached, requiring Groen to show cause why he should not be ordered to produce documents and appear for testimony before the Commission staff at the Commission's Atlanta Regional Office pursuant to a subpoena properly issued by the Commission staff and served upon him in connection with an ongoing Commission law enforcement investigation.

7. The Commission further requests that the Court enter an Order requiring Groen to obey the subpoena.

8. Jurisdiction is conferred upon this Court, and venue properly lies within the Northern District of Georgia, pursuant to Section 21(c) of the Exchange Act, 15 U.S.C. § 78u(c) ("In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within which the jurisdiction of which such investigation or proceeding is carried on . . . in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records."), because West Mountain is located in Atlanta. Further, Section 21(c) of the Exchange Act provides that "any failure to obey such order of the court may be punished by such court as a contempt thereof." 15 U.S.C. § 78u(c).

WHEREFORE, the Commission respectfully requests :

I.

That the Court enter an Order to Show Cause, directing the Respondent Groen to show cause why this Court should not enter an Order requiring his production of the requested documents and his appearance for testimony.

II.

That the Court enter an Order requiring the Respondent Groen to comply fully with the subpoena.

III.

That the Court order such other and further relief as may be necessary and appropriate to achieve compliance with the subpoena.

Dated: January 5, 2018.

Respectfully Submitted,

s/M. Graham Loomis

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